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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/510,896	10/08/2004	Martin Dotling	03869.105878	8560
86528	7590	11/08/2010		
King & Spalding LLP 401 Congress Avenue Suite 3200 Austin, TX 78701			EXAMINER TRAN, PHUC H	
			ART UNIT 2471	PAPER NUMBER
			NOTIFICATION DATE 11/08/2010	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

AustinUSPTO@kslaw.com
AustinIP@kslaw.com

Office Action Summary

Application No.

10/510,896

Applicant(s)

DOTTING ET AL.

Examiner

PHUC TRAN

Art Unit

2471

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 August 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 33-41 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 33-41 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/C)
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 33-34, and 36-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Berger et al. (Pub. No. 2003/0221156).

- With respect to claims 33-34 and 36-37, Berger teaches a method for adjusting the data rate of a data stream in a communication device such that the data stream is divided into at least one data block including transmission bits to be transmitted (see Fig. 2), comprising: forming the transmission bits from information-carrying input bits by an encoding process (a data stream from a communications signals is encoded with outer code see abstract);

removing specific transmission bits from a data block of the data stream for the adaptation of the data rate (e.g. deleting at least one bit from each symbol to achieve a desired data rate see abstract); removing the transmission bits according to a dotting pattern (e.g. the puncture in page 2 paragraph 17). Berger fails to disclose configuring the dotted pattern that 8 of 48 bits of the data block are dotted, and the 8 to 48 bits of the data block are bits 1, 2, 4, 8, 42, 45, 47 and 48. But Berger teaches the puncture routines as Table 1-5 (pages 4-6). Thus, it would have been obvious to person of ordinary skill in the art at the time of the invention was

made to understand the puncture/dotting pattern is the desired choice of inventor to select the puncture/dotting pattern in the communication device for encoding data.

- With respect to claims 38-39, Berger discloses the communication device is one of a mobile radio transmission device or mobile radio reception device (e.g. Fig. 1 shows the stations 12 and 14).

3. Claims 35 and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Berger et al. (Pub. No. 2003/0221156) in view of Das et al. (U.S. Patent No. 7133688).

- With respect to claims 35 and 40, Berger discloses all the aspect of the claimed invention as set forth above but fails to teach wherein the transmission bits to be transmitted are transmitted via the HS-SCCH corresponding to the UMTS standard. Das discloses transmitting data via HS-SCCH (see col. 10, lines 25-28). Thus, it would have been obvious to a person of ordinary skilled in the art at the time of the invention was made to implement the transmitting data via HS-SCCH corresponding to the UMTS into Berger invention to transmit data in communication.

Response to Amendment

4. Applicant's arguments filed 8/12/2010 have been fully considered but they are not persuasive.

In response Applicant's argument that "Examiner failed to explain why a person skilled in the art would selected exactly the combination claimed from 377348994 possible selection"

(Argument date 8/29/2008). "Examiner failed to explain why a person skilled in the art would randomly select the claimed puncture pattern" (Argument date 8/12/2010). Examiner respectfully disagrees with Applicant. Applicant admitted that "There are now very many options for how individual bit can be puncture ...which cannot all be investigated within a reasonable time" (Argument date 8/29/2008), therefore the puncture/dot patterns are well know in the art. And, it would be obvious to a person of skill in the art at the time of the invention was made to try selecting a pattern to encode data in communication and for matching a rate in a mobile communication. The claims do not disclose how to select a pattern but only disclose the pattern which is obvious to try by inventor.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to PHUC TRAN whose telephone number is (571)272-3172. The examiner can normally be reached on 8-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, CHI PHAM can be reached on 57127233179. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/PHUC TRAN/
Primary Examiner, Art Unit 2471